IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.4045 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	**No**
2	To be referred to the Reporter or not ?	**No**
3	Whether their Lordships wish to see the fair copy of the judgment ?	**No**
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	**No**
5	Whether it is to be circulated to the civil judge ?	**No**

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PAN PIPES RESPLENDENTS LTD - Petitioner(s)
Versus
STRESSED ASSETS STABILIZATION FUND - Respondent(s)

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Appearance :
MR VISHWAS K SHAH for Petitioner(s) : 1,
MR INDRAVADAN PARMAR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
Date : 14/06/2007
ORAL JUDGMENT

(1) Heard the learned advocates appearing for the petitioner and the respondent. RULE. In light of the view that the Court is inclined to adopt, the learned advocate for the respondent is directed to waive service of rule and the

petition is taken up for final hearing and disposal today.

(2) The facts lie in a very narrow compass. The petitioner-Company is a debtor and the account of the petitioner became a Non-Performing Asset. The respondent-financial institution, therefore, issued notice dated 23.06.2006 under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the Securitisation Act). On 22.08.2006 the petitioner sent a representation and objections to the said notice dated 23.06.2006. As per the postal receipts produced at Page No.34, the said representation and objections were forwarded by Speed Post on 23.08.2006 and 24.08.2006. On 03.02.2007 the respondent issued notice under Section 13(4) of the Securitisation Act, which appears at Annexure-C to the petition. The principal grievance of the petitioner is that the respondent-financial institution has not

complied with the provisions of Section 13(3A) of the Securitisation Act.

(3) Upon notice having been issued the respondent has put in appearance and also tendered affidavit-in-reply dated 14.03.2007. In Paragraph No.6 of the affidavit-in-reply, the following averments have been made:

> "6. Now, the only issue raised in the petition is of not responding to the said representation dated : 22.08.2006 that submitted by the petitioner for its negotiated settlement of dues in response to the said demand notice dated: 23.06.2006. In this regard, the respondent most respectfully submits that it had carefully examined the said representation/settlement proposal dated: 22.08.2006 and vide its letter d No.HO.SASF.PPRL/3721 of dated: 28.02.2007 conveyed its inability to accede to the same since the amount offered for settlement by the petitioner was very much low. The said reply fulfills the compliance of Section 13(3-A) of the said Act which was the sole grievance of the

petitioner."

(4) The learned advocate for the respondent-financial institution submitted that though the respondent may not have complied with the provisions of Section 13(3A) of the Securitisation Act immediately, in light of the fact that the representation/objections of the petitioner dated 22.08.2006 have not been accepted and the inability to accept the proposal has been conveyed vide communication dated 28.02.2007 it would go to show that there is substantial compliance with provisions of Section 13(3A) of the Securitisation Act. That in the circumstances, the respondent must be permitted to take appropriate action pursuant to notice dated 03.02.2007 under Section 13(4) of the Securitisation Act.

(5) The learned advocate for the petitioner submitted that communication dated 28.02.2007, on which reliance has been placed on behalf of

the respondent would itself go to show that the time limit, within which Section 13(3A) of the Securitisation Act requires the financial institution to respond, has not been adhered to. That in fact the petition had been preferred on 12.02.2007 and, therefore, the reply dated 28.02.2007 cannot be taken into consideration for the purposes of upholding the notice under Section 13(4) of the Securitisation Act issued on 03.02.2007.

(6) The facts narrated hereinbefore go to show that compliance, if any, under Section 13(3A) of the Securitisation Act by the respondent is definitely belated. Section 13(3A) of the Securitisation Act requires that the secured creditor shall consider the representation or objections made by the borrower on receipt of notice under sub-section (2) of Section 13 of the Securitisation Act and in the event the secured creditor comes to the conclusion that such representation or objection is not

acceptable or tenable the secured creditor shall communicate within one week of receipt of such representation or objection the reasons for non-acceptance of the representation or objection to the borrower. Admittedly, in the present case the objections were raised on 22.08.2006. Though exact date of receipt of the said objections by the respondent-financial institution is not available on record it is equally an admitted position that the said objections have been dealt with only on 28.02.2007, namely, after filing of the petition. Therefore, the respondent-financial institution has, while conveying the non-acceptance of the representation or objection, gone beyond the prescribed period of one week from the date of receipt of representation or objection. In the circumstances, the action under Section 13(4) of the Act initiated vide notice dated 03.02.2007 is definitely in violation of the provisions of Section 13(3A) of the

Securitisation Act. The said notice, therefore, cannot be permitted to operate and is hereby quashed and set aside. The petition is accordingly allowed in the aforesaid terms. Rule made absolute. There shall be no order as to costs.

(7) Needless to state that the Court has not considered it necessary to deal with the respective submissions made on behalf of the respondent and the petitioner that the respondent is entitled to initiate fresh action under Section 13(4) of the Securitisation Act subsequent to compliance under Section 13(3A) of the Securitisation Act on 28.02.2007 and the claim of the petitioner that the petitioner is entitled to challenge the same in accordance with law.

Sd/-
[D.A. MEHTA, J]

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